

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket No. 40-8943-MLA
Crow Butte Resources, Inc.)	
)	ASLBP No. 07-859-03-MLA-BD01
(North Trend Expansion Project))	

MOTION TO WITHDRAW LICENSE AMENDMENT APPLICATION

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.107(a), and 2.323, Crow Butte Resources, Inc. (“CBR”) moves to withdraw its pending license amendment request (“LAR”), from May 30, 2007, to allow CBR to expand in situ uranium recovery operations to the North Trend Expansion Area (“NTEA”).¹ In accordance with the requirements of 10 C.F.R. § 2.323(b), CBR has consulted with the other participants to this proceeding. The NRC Staff, the Oglala Sioux Tribe, and the Oglala Delegation of the Great Sioux Nation Treaty Council do not oppose this motion. In consultation, the Consolidated Intervenors stated that the application should be withdrawn with prejudice because the application “is outdated” and “relates to the expansion of a facility that is itself in remediation.”

II. BACKGROUND AND PROCEDURAL HISTORY

On May 30, 2007,² CBR submitted the LAR to its source material license SUA-1534 to authorize construction and operation of the NTEA, an in situ uranium recovery project expansion. In the subsequent adjudicatory proceeding, the Atomic Safety and Licensing Board

¹ Letter from Stephen P. Collings, President, CBR, to Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs, NRC at 1 (May 30, 2007) (ADAMS Accession No. ML0711550057).

² Letter from Stephen P. Collings, *supra* note 1 at 1.

(the “Board”) admitted, and the Commission affirmed and modified, Contention A regarding aquifer mixing from proposed mining operations and the potential contamination of offsite ground and surface waters.³ During the pendency of the Staff review, however, CBR asked that the review be suspended, first to optimize resources and prioritize the Marsland Expansion Area project and later due to market forces.⁴ In a Board status conference held on October 3, 2023, CBR committed to determining whether to proceed with the NTEA amendment application.⁵ CBR has since chosen to formally withdraw the license amendment application and submitted a letter to that effect on December 18, 2023.

III. LEGAL STANDARD FOR WITHDRAWAL

The NRC regulations governing adjudicatory proceedings at 10 C.F.R. § 2.107(a) provide that:

The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. If the application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

This Board admitted one contention in this proceeding and recently issued the Notice of Hearing on December 20, 2023. Thus, the above regulations empower the Board to regulate the terms and conditions of withdrawal.⁶ The Board possesses broad discretion regarding the imposition of conditions on a withdrawal, but the record must demonstrate some legal injury to a private or

³ See e.g. *Crow Butte Resources, Inc.* (North Trend Expansion Area), CLI-09-12, 69 N.R.C. 535, 563-564 (2009); Status Conference, Tr. at 797 (Oct. 3, 2023).

⁴ See Licensing Board Memorandum and Order (Confirming Matters Addressed at October 3, 2023 Prehearing Conference and Continuing NRC Staff Status Reporting Requirement at 1 (Oct. 26, 2023) (unpublished).

⁵ *Id.* at 2.

⁶ *Phila. Elec. Co.* (Fulton Generating Station, Units 1 & 2), ALAB-657, 14 N.R.C. 967, 974 (1981).

public interest to justify conditions.⁷ Therefore, when the Board imposes terms and conditions of withdrawal, they “must bear a rational relationship to the conduct and legal harm at which they are aimed.”⁸

Settled NRC precedent provides that the prospect of a second proceeding, standing alone, “does not provide the requisite quantum of legal harm to warrant dismissal with prejudice.”⁹ And “the possibility of future litigation with its expenses and uncertainties is precisely the consequence of *any* dismissal without prejudice.”¹⁰ Absent a decision on the merits, dismissal with prejudice is “particularly harsh and punitive” when imposed upon a withdrawal,¹¹ and dismissal of a proceeding with admitted contentions is not a legal injury sufficient to warrant the imposition of conditions on withdrawal.¹² Ultimately, “a withdrawal with prejudice should be reserved for those unusual situations which involve substantial prejudice to the opposing party or to the public interest in general.”¹³

IV. THE BOARD SHOULD DISMISS THE APPLICATION WITHOUT PREJUDICE

The Board’s dismissal of this proceeding without prejudice conforms to NRC precedent because there has been no decision in this proceeding on the merits.¹⁴ In addition, CBR’s request to withdraw is not based on any decision on the merits. CBR does not want to expend additional resources to complete licensing of the NTEA and has no plans to re-file an application

⁷ *Sequoyah Fuels Corp.* (Source Material License No. SUB-1010), LBP-93-25, 38 N.R.C. 304, 315 (1993), *aff’d*, CLI-95-2, 41 N.R.C. 179 (1995).

⁸ *Phila. Elec. Co.*, ALAB-657, 14 N.R.C. at 974.

⁹ *Id.* at 979 (citing *Jones v. SEC*, 298 U.S. 1, 19 (1936)).

¹⁰ *Phila. Elec. Co.*, ALAB-657, 14 N.R.C. at 1135 (cleaned up) (emphasis supplied) (citing *Jones*, 298 U.S. at 19).

¹¹ *Id.* at 974.

¹² *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-99-27, 50 N.R.C. 45, 56 (1999).

¹³ *Phila Elec. Co.*, ALAB-657, 14 N.R.C. at 1132.

¹⁴ *Id.* at 1138.

for the site. Accordingly, the Board should dismiss this proceeding without imposing terms and conditions for this withdrawal.

V. CONCLUSION

For the foregoing reasons, the Commission should grant CBR's motion to withdraw its application without prejudice.

Respectfully submitted,

/s/Anne R. Leidich

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Dated: December 29, 2023

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Withdraw License Amendment Application has been served through the E-Filing system on the participants in the above-captioned proceeding, this 29th day of December 2023.

Respectfully submitted,

/s/ Anne R. Leidich

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